

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 06-CR-223

TIMOTHY MILTON, et. al.,

Defendants.

ORDER SCHEDULING EVIDENTIARY HEARING

On September 11, 2006, Benjamin Stibbe (“Stibbe”) was charged along with twelve others in a criminal complaint alleging that they conspired to distribute more than one kilogram of heroin resulting in death or serious bodily injury, in violation of Title 21, United States Code, Sections 846, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, § 2. On September 19, 2006, the grand jury returned a twenty-two count indictment against twelve defendants, including Stibbe. Stibbe was charged in count one with conspiracy to distribute more than one kilogram of heroin and more than fifty grams of crack cocaine with death or serious bodily injury resulting from the use of the heroin distributed in the conspiracy, in violation of Title 21, United States Code, Sections 841(b)(1)(A) and 846, and in count five with distributing heroin in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C) and Title 18, United States Code, Section 2. The indictment also contained a notice of forfeiture.

On October 10, 2006, this court denominated the case as complex and suspended the motion schedule. On November 21, 2006, the court set a motion schedule and set aside February 27, 2007 at 9:00 A.M. for any necessary evidentiary hearings.

On January 22, 2007, Stibbe filed a motion to suppress statements. As a basis for his motion to suppress, Stibbe alleges that he did not knowingly, intelligently, and voluntarily waive his Miranda rights because when he did so, he was under the influence of heroin. According to Stibbe, since he was in the company of an undercover police officer when he consumed heroin immediately before his interrogation, law enforcement should have been aware of his impairment.

Stibbe then alleges that he was interrogated by another police officer. This police officer allegedly advised Stibbe of his Miranda rights more than an hour after initially contacting Stibbe. Stibbe seeks that all statements made prior to being advised of his rights be suppressed.

Finally, Stibbe seeks to suppress statements made on December 2, 2005. Immediately upon being approached by the officer, Stibbe allegedly stated that he would not answer any questions regarding a particular matter. This assertion is recorded in the officer's report.

Stibbe does not request an evidentiary hearing to resolve his motions. However, given the nature of Stibbe's motions, the court believes that an evidentiary hearing is necessary to resolve the issues raised by Stibbe's motions.

IT IS THEREFORE ORDERED that the court shall conduct an evidentiary hearing regarding Stibbe's motion to suppress statements on **February 27, 2007 at 9:00 AM** in Courtroom 254 of the United States Courthouse, 517 E. Wisconsin Avenue, Milwaukee, Wisconsin. The court has scheduled three hours of court time for this hearing. If either party believes additional time is necessary, the party shall promptly notify the court upon receipt of this order.

Dated at Milwaukee, Wisconsin this 24th day of January, 2007.

s/AARON E. GOODSTEIN
U.S. Magistrate Judge